

TANGLAW

Deceased Estates



WHAT HAPPENS WHEN YOU ARE NAMED AS AN EXECUTOR OR ADMINISTRATOR OF AN ESTATE?

Being named as an executor or administrator of an estate can be an overwhelming experience for many. For the majority who have little experience with the legal role of an executor or administrator of an estate, it is difficult to know where to begin and can become a taxing process on the person.

The executor or administrator has a number of issues to consider, including:

- Has the original Will been located, or is there only a copy?
- If there is no Will in place, what does the *Administration Act 1903 (WA)* say about the persons and the proportions in which they are entitled to distribution from the estate?
- What were the deceased's **assets and liabilities** at the date of death?
- What are the taxation implications associated with distribution of specific assets to certain beneficiaries?
- Is it necessary to take out adequate insurance to protect the value of specific assets until they are distributed?
- Are there ongoing liabilities to be met before an application to the Court is made, and is there **sufficient liquidity** in the estate to pay expenses?
- Does anyone dispute the deceased's capacity at the time the will was made?
- Have all the potential persons who may have a claim on the estate been sufficiently provided for in the estate? If not, is there a risk of a family provision claim being made by anyone?

WHAT IS THE DIFFERENCE BETWEEN AN EXECUTOR AND ADMINISTRATOR?

Executor

An **executor** of an estate is the person specifically named in a Will who is entrusted to carry its terms, and otherwise administer the estate.

Where an executor, or substitute executor, has been named and is able and willing to act, an application for a **grant of probate** must generally be made to the Supreme Court. Even where an original Will cannot be located, a person named as executor in a copy or draft of the Will is still capable of applying to the Court to obtain probate of the copy or reconstruction of the lost Will.

Administrator

An **administrator** of an estate is the person appointed by the Court to manage the estate and potential assets that fall outside the estate in accordance with the provisions of the *Administration Act 1903 (WA)*. Similarly, the statute dictates the proportions in which certain persons will be entitled to distribution of the deceased's estate.

An application for **letters of administration** to the Court is necessary, supported by a number of documents, including the consents of any others who may be entitled to apply.

An administrator can also be appointed by the Court where there is a Will in place, but the named executor has renounced their position, leaving the Court to appoint a replacement to carry out the terms of the Will.

WHY GET LEGAL ADVICE?

What may seem simple soon turns out to be complex

Invariably in our experience, what many may assume to be a simple estate matter can rapidly become peppered with complexities, such as where:

- the original Will is lost;
- there is no Will in existence;
- an applicant may have to prove their status as a de facto partner; or
- someone disputes the testamentary capacity of the deceased.

Legal requirements of an application

Applications to the Court for a grant of probate or letters of administration must be supported by an **affidavit** made in compliance with procedural and legislative requirements.

These requirements can be complex and onerous, particularly in relation to lost Wills or applications for letters of administration. Without legal advice and assistance, you may have a limited chance of obtaining a grant from the Court.

You may be held personally liable

An executor or administrator may be held **personally liable** for any loss to the estate due to inordinate delays in the administration process. This can extend to paying interest on beneficiaries' unpaid distributions.

For example, many are unaware that they are technically obliged, by operation of the *Non-Contentious Probate Rules 1967 (WA)*, to pass the accounts and file a plan of distribution of the estate within 12 months of the date of the probate.

Legal advice can help you understand your legal duties and how best to negotiate various issues whilst limiting the risk of personal liability.

Helping you to recover commission

Unless specifically provided for in the Will, an executor or administrator cannot charge for their time spent in administering an estate without approval from the Court. The consequence of this is that many are left significantly out of pocket as they are forced to take time off work to deal with the time-consuming aspects of administration.

Solicitors at TANG LAW can assist you with your application to the Court to receive a percentage of commission from the gross value of the estate to compensate you for time spent in carrying out your duties.

Deceased Estate Litigation

In the event an executor or administrator is faced with litigation from a claimant against an estate, legal advice can be indispensable in obtaining the best outcome for the estate.

OUR SERVICES AT TANG LAW

Our solicitors are committed to helping you with your queries and concerns about the estate of a loved one. Whether it is a standard probate application to the Supreme Court or a more complex matter, our solicitors are well-equipped with the knowledge and expertise to help you.

Over the years, we have also assisted beneficiaries who have been inadequately provided for in the will by successfully negotiating significantly greater provision from the estate.

Call us to arrange an appointment with our solicitors and see how we can assist you.

Our Fees

To provide assurance and certainty to our clients with respect to the anticipated fees, we have fixed* our fees for standard deceased estate applications.

*Prices quoted include GST and are for standard applications only. Terms & Conditions apply.

^ Filing fee is payable to the Supreme Court of Western Australia, and effective from 1 July 2014.

Publishing fees are **estimated** and subject to revision by the respective newspaper publisher.

DECEASED ESTATES	
Application for Probate - Simple	\$1,100
Application for Letters of Administration with the Will Annexed	\$1,500
Application for Letters of Administration	\$1,990

Other Fees & Disbursements	
Filing an application for grant of probate of letters of administration	\$271 [^]
Publishing notice of distribution of deceased estate#, pursuant to Section 63 of <i>Trustees Act</i> :	
<ul style="list-style-type: none"> • Government Gazette 	\$30
<ul style="list-style-type: none"> • The West Australian (Wednesday classifieds) 	\$256.95

TANGLAW

Suite 2, 191 James Street,
Northbridge WA 6003

Tel +61 8 9328 7525

Fax +61 8 9328 7535

Email enquiries@tanglaw.com.au

Web www.tanglaw.com.au

